

AK-CHIN INDIAN COMMUNITY,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 94-86-A
ACTING DIRECTOR, OFFICE OF	:	
TRIBAL SERVICES, BUREAU OF	:	
INDIAN AFFAIRS,	:	
Appellee	:	August 10, 1994

Appellant Ak-Chin Indian Community seeks review of a February 15, 1994, decision issued by the Acting Director, Office of Tribal Services, Bureau of Indian Affairs (Director; BIA), disapproving appellant's application for a FY 1994 Special Tribal Court grant. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Appellant filed a timely application for a FY 1994 Special Tribal Court grant pursuant to an announcement published in the Federal Register. 58 FR 53374 (Oct. 14, 1993). By letter dated February 15, 1994, the Director notified appellant that its application had been rated by a review panel and had received a score of 48 out of a possible 100. The letter stated that the weaknesses in appellant's application were:

A project such as the revision of an entire law and order code requires professional legal expertise for proper drafting and review. The application does not incorporate the use of legal counsel for the project. In addition, one year may not be enough time to complete a project of such importance and magnitude. There is no indication of continued funding for this project beyond the initial grant year. The budget amounts on page 14 and on Standard Form 424 are inconsistent.

(Letter at 2).

Appellant's brief states that it

believes it has access to the legal expertise necessary to create a professional and respectable revision of its law and order code. * * * [Appellant's] proposal does not incorporate legal counsel into its approach to revising its law and order code because it feels that its prosecutor and law students from nearby Arizona State University College of Law could provide the legal expertise needed to properly draft and review the proposed updates and revisions. * * * Any additional professional legal expertise would be welcome but is likely to be disruptive to efforts by the Ak-Chin people to specifically tailor their laws to the needs of the

Ak-Chin Community. Furthermore, Ak-Chin * * * seeks to assert its self-determination by calling upon its own human resources to restructure its law with the help of law educated Indian professionals who are sensitive to the attitudes of Indian people and knowledgeable about Indian communities. The authors of Ak-Chin's proposal feel the goals can be achieved only if the approach remains unchanged.

(Brief at 1-2).

Appellant's statements in its brief give much more detail about its proposal than was presented in its application. As the Board held in Sioux Community v. Acting Director, Office of Tribal Services, 25 IBIA 246 (1994), consideration of information presented after the date for filing an application under the Special Tribal Court program would violate BIA's and the Board's duty to give fair and equitable consideration to all applications, by giving some applicants two opportunities to submit an acceptable application. Cf. Hughes Village Council v. Acting Juneau Area Director, 24 IBIA 192 (1993) (Small Tribes program); Chippewa Cree Tribe of the Rocky Boy's Reservation v. Acting Billings Area Director, 41 23 IBIA 129 (1992) (planning grant program). The Board concludes that the Department cannot consider the additional information and explanations presented on appeal.

The panel members' comments show that they understood appellant intended to use law students for legal input and review. The comments also show, however, that the panel members did not believe this input would be sufficient to provide appellant with necessary legal expertise to protect it in light of the many possible legal ramifications and impacts on individuals' rights which arise from tribal laws. The Board concludes that the Director did not abuse her discretion in concluding that additional legal expertise was necessary for a complete revision of appellant's law and order code.

As to the Director's conclusion that one year did not appear to be enough time to complete a project of this magnitude, appellant contends:

The proposal authors recognize this [that one year is a relatively short period to complete the project], however the desired result of the project is a restructured codified body of law which can immediately become effective and which the Community Council can build on. The process by which Ak-Chin proposes amending its law and order code is just as important as the result. The project approach will give Ak-Chin an opportunity to update and revise those portions of the law and order code obviously in need of change. Participants in the project will be able to address problem loopholes in the law, deficiencies in court procedure, and criminal penalties which have never been enhanced since the Federal Indian Civil Rights Act was amended. The approach proposed will inevitably give tribal legislators insight into a process by which it can amend its law and thereby equip the legislators with the tools of how to build on whatever is achieved with grant moneys.

(Brief at 2-3).

Again, the information appellant has provided on appeal goes beyond what was given in its application. In essence, appellant has revised its application by suggesting that the entire law and order code might not be amended under the requested grant.

Part III.D of the program announcement states:

Grant awards will be for a one year (12 month) budget period.
Applications proposing projects which cannot be completed within one year or [are] intended to be on-going must include a plan for continuation which does not contemplate continued funding from Special Tribal Court funds.

Appellant's application does not show how it intends to provide continued funding for the revision of the law and order code. The Director acted within her authority in determining that the proposal might not be completed within the one-year timeframe of the grant, and did not provide information concerning funding for the continuation of the project.

Finally, appellant did not respond to the Director's statement that the amount of funding it was requesting was unclear.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Director's February 15, 1994, decision is affirmed.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge